

1984 WL 249687 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 28, 1984

*1 Magistrate W.M. LeNoir
Magistrate Fifth District
Sumter County
Horatio, S.C. 29062

Dear Magistrate LeNoir:

In a letter to this Office, you referenced [Section 16-13-420, Code of Laws of South Carolina](#), 1976, pertaining to a situation where a rented object, which is rented from an agency on a military installation and where the State has no jurisdiction, is kept in an area under State jurisdiction. In our telephone conversation you particularly referenced that the rental agency is within the confines of Shaw Air Force Base. Referencing such, you questioned whether a magistrate with jurisdiction over the area where the rented object is being kept could issue an arrest warrant pursuant to [Section 16-13-420](#).

[Section 16-13-420](#), supra, states as follows:

“Any person having any motor vehicle, trailer, appliance, equipment, or tool in his possession or under his control by virtue of a lease or rental agreement who willfully and fraudulently fails to return the motor vehicle, trailer, appliance, equipment or tool within 72 hours after the lease or rental agreement has expired, or who fraudulently secretes or appropriates the property to any use or purpose not within the due and lawful execution of his lease or rental agreement shall be guilty of larceny. Provided, that the provisions of this section shall not apply to lease-purchase agreements or conditional sales type contracts.”

Referencing such provision, it appears that the criminal act occurs when the person, who obtains valid possession of an object pursuant to a rental agreement, willfully and fraudulently fails to timely return such object or who fraudulently appropriates the property inconsistent with the terms of the rental agreement. Such is consistent with the following:

“Although a person has acquired lawful possession by a valid contract of bailment, if the contract is afterwards terminated by its performance, by an act of the owner, or by some tortious act of the bailee whereby the possession reverts to the owner, leaving merely the custody with the bailee, a felonious conversion of the property to his own use by the bailee is larceny.”

50 Am.Jur.2d, Larceny, § 90, p. 267.

Furthermore,

“... one to whom property is delivered by the owner for some limited, special, or temporary purpose, may be regarded as having its custody only, and is capable of committing larceny thereof.”

50 Am.Jur.2d, Larceny, § 89, pp. 264-265.

[Section 16-13-420](#), supra, is similar to other statutory offenses, such as embezzlement, which were created to avoid the difficulty for criminal courts to reach situations involving the fraudulent misappropriation of goods entrusted by owners to other persons in situations involving a relation of trust and confidence because the elements of taking and asportation, elements essential to larceny, were lacking. See: 50 Am.Jur.2d, Larceny, § 89, p. 263. In [Stegall v. Commonwealth](#), 160 S.E.2d 566 (1968), the Virginia Supreme Court of Appeals was faced with the question of whether the failure of an individual who leases a motor

vehicle to return it as agreed constituted embezzlement as defined in the Virginia statutes. In their decision, they cited the following:

*2 “The mere failure to return property or account for a trust fund, while evidence of a conversion, does not necessarily constitute embezzlement, but failure to perform an absolute duty to return the property or refusal to account or pay over on demand constitutes embezzlement, or is, at least, evidence from which a fraudulent conversion may be inferred. There is no settled mode by which a fraudulent conversion or appropriation must take place, and the means by which it is accomplished are immaterial. It may be effected by any exercise of the right of ownership inconsistent with the owners rights and with the nature and purposes of the trust.” [160 S.E.2d 568](#).

See also: 38 A.L.R.3d, pp. 960-963.

In [South Carolina Tax Commission v. Schafer Distributing Company](#), 247 S.C. 491 at 495, 148 S.E.2d 156 (1966), the South Carolina Supreme Court quoted with approval the following:

“The authorities uniformly hold that where the State cedes to the United States the land upon which military installations are placed by the United States, exclusive jurisdiction over all matters and things occurring within the reservation is fixed alone in the United States. The laws of the State of South Carolina ... have no application whatsoever within Shaw Air Force Base.”

Referencing the above, it is clear that the criminal act prohibited by [Section 16-13-420](#), supra, does not take place when an object is rented and the rental agreement executed. The larceny occurs when the rented goods, entrusted to the individual who executes such rental agreement, are not timely returned as required by such agreement, or are fraudulently secreted or appropriated in a manner inconsistent with the terms of the rental agreement. As to rented objects kept off the military base, as magistrate you would have jurisdiction to issue warrants for any such violations.

Sincerely,

Charles H. Richardson
Assistant Attorney General

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